United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

BRIEF FOR APPELLANT AND APPENDIX

UNITED STATES COURT OF APPEALS
For the District of Columbia Circuit

No. 20371
(Formerly Misc. No. 2819)

LEONARD W. COLLINS,

Appellant,

v.

DAL[illegible]. CAMERON,

Appellee.

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Appeal from the United States District Court
for the District of Columbia

KARL G. FEISSNER

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Attorney for Appellant

QUESTION PRESENTED

Where the evidence presented indicates that a person can function in an adequate and normal manner in daily life, is his continued detention and incarceration in a mental hospital contrary to the established notions of fair play and substantial justice, so as to warrant positive action on a petition for a writ of habeas corpus?

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DALE C. CAMERON,

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BRIEF FOR APPELLANT

JURISDICTIONAL STATEMENT

The jurisdiction of the United States District Court for the District of Columbia was predicated on 28 U.S.C.A. §2241. The jurisdiction of this Court is based upon the Act of October 31, 1951, 65 Stat. 727, as amended, 28 U,S.C.A. §2253.

STATEMENT OF THE CASE

This case is an appeal from an order of the United States District Court for the District of Columbia, Holtzoff, J., discharging the appellant's writ of habeas corpus and remanding him to the custody of the appellee.

The appellant, Leonard W. Collins, was committed to Saint Elizabeths Hospital on June 3, 1964, by order of the United States District Court for the District of Columbia, pursuant to the provisions of 24 D.C. Code §301, as amended, after having been found not guilty by reason of insanity on a charge of second degree murder in Criminal Case No. 71-62.

The appellant brought a writ of habeas corpus, (App. 1), alleging that he was no longer insane, and consequently, that he was being illegally detained by the appellee, who is the superintendent of Saint Elizabeths Hospital. On March 16, 1966, appellant's present counsel was appointed to represent him in the proceedings below, (App. 5), and the matter came up for hearing before Judge Alexander Holtzoff on April 25, 1966, in the United States District Court for the District of Columbia.

At the hearing, upon the ruling of the Trial Court that "in a case such as this, one doctor is enough to make out a prima facie case", (App. 9), the witness, Dr. George Weickhardt, took the stand, and under questioning by cousel for the appellee, counsel for the appellant, and the Court itself, the following facts were elicited:

1. The appellant is currently taking a moderate amount of the tranquilizing drug, Thorazine.(App. 11)

2. People who are not committed to Saint Elizabeths Hospital also take Thorazine in these amounts and are able to adequately continue in their daily life.(App. 15)

3. As long as the appellant takes medicine and refrains from alchohol he gets along well.(App. 13)

As to this latter point, the Trial Court instructed counsel, during cross-examination of the witness, to "leave out the alcohol (sic) phase of (the cross-examination) because many normal people drink too much."(App. 14) This ruling was correct when applied to the appellant, in view of the fact that his only arrests for drunkenness occurred when he was in the United States Navy, (App. 14), in 1947.(App. 22, 23)

4. The witness further testified that only his own observations led him to believe that the appellant was mentally ill, (App. 15), and that the only objective tests ever given to determine the appellant's sanity were administered in 1962.(App. 16)

5. The witness felt that the appellant had improved a great deal since his committment.(App. 19)

At the conclusion of the hearing the Trial Court ruled that "(t)he very fact that the (appellant) is under tranquilizing drugs would make it dangerous to release him."(App. 23) This feeling of the Trial Court was repeated in the Findings of Fact, (App. 24), wherein the Court merely stated that the appellant "could", not would, "be dangerous to himself or others if released into the community."

STATEMENT OF POINTS

The evidence presented at the hearing did not demonstrate that the appellant, if released, would be a danger to himself or to society; therefore, the Trial Court erred by ordering the

appellant's continued detention solely because he is required to take tranquilizing medicine.

SUMMARY OF ARGUMENT

At the hearing of this matter, the evidence presented by the appellee's witness indicated that the appellant, although sometimes subjected to emotional tensions, could function well in his daily life, and could control these tensions by taking the drug, Thorazine, in minimal amounts. Thorazine is a tranquilizer that is available in virtually every pharmacy upon presentation of a physician's prescription. The Trial Court's ruling on the evidence showed a complete lack of understanding of the effects of this tranquilizer upon the body's nervous system. The effect of the Court's ruling as to Mr. Collins is the same as if a person bitten by a rabid dog were forced to be incarcerated regardless of whether a treatment were available from a private physician. Just as anti-rabies serum prevents such a person from evidencing the symptoms of hydrophobia, so does Thorazine prevent Leonard Collins from losing control of his emotions.

Since the evidence conclusively showed that Mr. Collins could control his emotions with minimal dosages of Thorazine, the Court erred in ruling that the evidence did not justify Mr. Collins' release from incarceration at Saint Elizabeths Hospital.

ARGUMENT

(With respect to this argument, and in view of the brevity and relevancy of the proceedings, the appellant desires the Court to read the entire transcript, noted at pages seven to twenty-three of the appendix)

The evidence presented at the hearing by the doctor from Saint Elizabeths Hospital illustrated that the petitioner would not be a danger to himself or others if he were to take minimal doses of the tranquilizer, Thorazine. The evidence further showed that while taking his medication, the appellant was able to function quite well, and could carry on in his daily life without difficulty or danger.

The Trial Court, contrary to the evidence, found that the appellant "could be" dangerous to himself. Such a finding is contrary to the provisions of 24 D.C. Code §§301(e) and (g), which authorize a patient at Saint Elizabeths Hospital to seek release by habeas corpus if he can show that he "will not in the reasonable future be dangerous to himself or others." The appellant contends that the theories of "could be " are not sufficient to deny liberty when the appropriate standard would seem to be whether or not in the opinion expressed with reasonable medical certainty he would be dangerous in the reasonably foreseeable future, either to himself or to others. The appellant, and the appellee's witness in the lower Court both showed that if the appellant took his medication, the possibility of the appellant becoming dangerous is no more than that of a "normal,

reasonable" man becoming dangerous.

The Trial Court, although it refused to allow the expert witness, on either direct or cross-examination to fully explain the meaning of his interpretations, ruled that the appellant was not fit for release into society. The ruling of the Trial Court appears to be based solely on "(t)he very fact that the (appellant) is under tranquilizing drugs." Because the amount of these tranquilizing drugs taken by the appellant is comparable to the amount taken by persons who do not require hospitalization; because these drugs can be, and are prescribed by private physicians for their own patients; and because the appellant can"get along quite well when he is taking his medicine," it is patently obvious that the appellant, when he takes his readily available medicine, can function as a normal individual, without danger to himself or society.

In essence, therefore, the appellant's detention at Saint Elizabeths Hospital is grossly illegal, for it is based merely upon the fact that he, like many people who are not, and need not be institutionalized, takes tranquilizing drugs. As was Lawrence Robinson a drug taker, so too is Leonard Collins, the only differences being in the type of drug used, its effect on the user, and the penalty imposed by law for its use. In Robinson's case, the drug was a narcotic, the use of which had the effect of divorcing him from reality, and which use, in itself, subjected him to stringent criminal punishment; whereas in Collins' case, the

drug is a tranquilizer used by many decent, law-abiding citizens, which has the effect of easing his emotional tensions. Unfortunately, the use of tranquilizers, as applied by the Trial Court to Mr. Collins alone, subjects him, and no other person, to an indefinite period of incarceration.

Appellant contends that he is, like Lawrence Robinson and DeWitt Easter were, being subjected to a cruel and unusual punishment in violation of his Eighth Amendment rights, solely for having the status of being within a class that the Trial Court erroneously concluded was either illegal or immoral.

CONCLUSION

Appellant moves this Court to follow the Supreme Court's holding in Robinson v. California, 370 U.S. 660, 82 S. Ct. 1417 (1962) that a man could not be incarcerated solely because of his status of being a narcotics addict; and the ruling of this Court in Easter v. District of Columbia, ___U.S.App.D.C.___, ___F2d___, No. 19365 (March 31, 1966), that a man could not be incarcerated solely because of his status of being a chronic alchoholic, to the end that this Court should rule that since the evidence introduced below did not show he would be a danger to himself or society if he took his medication, Leonard Collins must not be indefinitely incarcerated solely because he, like many other people, has been ordered by a physician to take tranquilizers.

Respectfully submitted,

/s/Karl G. Feissner
Attorney for Appellant

Of Counsel:
ALPERN & FEISSNER
1420 K Street, N.W.
Washington, D.C.

APPENDIX

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A P P E N D I X

In The United States District Court
in and for
The District of Columbia

Leonard W. Collins - Petitioner

vs.

H.C. 120-66

Dale C. Cameron - Respondent
Superintendent.
St. Elizabeth's Hospital

Petition for Issuance of
Writ of Habeas Corpus
Pursuant to Titles 18, 28, U.S.C.C.

Comes now your petitioner, who states as follows that:

I am a citizen of the United States and am of legal age;

I am able to pay costs, as per my income, as may be incurred in this Honorable Court;

I make this motion in good faith and believe I am entitled, by law, to the redress I seek.

Motion

Petitioner herein moves that this Honorable Court Issue Writ of Habeas Corpus; whereas:

I. The forenamed respondent has acted, and is acting, arbitrarily and capriciously in denying your petitioner his Civil Rights.

II. The forenamed respondent is acting in direct violation of the U.S. Constitution in depriving your petitioner of his liberty, freedom, and the right to private person, by the arbitrariness of his detention.

Petitioner believes this Court to have Jurisdiction to Act as provided for in the U.S. Code, chapt. 645, §1, 62 Stat. 826, eff. Sept. 1. 1948, (June 25, 1948): "The District Court of the United States shall have original jurisdiction."

Petitioner herewith states that this petition is made in good faith with no attempt to appear frivolous. Petitioner believes in the merits of his cause and prays this Honorable Court's indulgence.

Respectfully submitted by:

/s/Leonard W. Collins

Notarization

(Filed March 9. 1966)

ORDER AUTHORIZING FILING AND DIRECTING
RESPONDENT TO SHOW CAUSE

It is this 8th day of March, 1966,

ORDERED that the petition be filed without prepayment of costs.

IT IS FURTHER ORDERED that the respondent either in person or by counsel appear in the Court on or before the seventh day after service of a copy of this order and of the petition upon him and make return to said petition and show cause, if any he has why the Writ of Habeas Corpus should not issue.

IT IS FURTHER ORDERED that the respondent serve on the petitioner by mail a copy of his answer to this rule.

The Clerk is directed to furnish the United States Marshal with a copy of this order and of the petition for the purpose of making such service.

/s/Sirica, J.

(Filed March 15, 1966)

RETURN TO ORDER TO SHOW CAUSE
WHY WRIT OF HABEAS CORPUS SHOULD NOT ISSUE

This is the return and answer of Dr. Dale C. Cameron, Superintendent, Saint Elizabeths Hospital, to the order of the Court directing respondent to show cause why a writ of habeas corpus should not issue.

1. The petitioner, Leonard W. Collins, alleges in effect that he is illegally detained in Saint Elizabeths Hospital, Washington, D.C. The respondent admits that the petitioner is confined in Saint Elizabeths Hospital, but denies that such detention is illegal.

The petitioner, Leonard W. Collins, was admitted to Saint Elizabeths Hospital June 3, 1964, by order of the United States District Court for the District of Columbia, in accordance with the provisions of Title 24, Section 301(d), of the District of Columbia Code, as amended, after having been found not guilty by reason of insanity, by a jury, on a charge of Second Degree Murder, Criminal Number 71-62.

Copies of his commitment paper are attached hereto, marked Exhibit "A", and prayed to be read as a part of this return.

2. The petitioner, Leonard W. Collins, alleges in effect that he has recovered and will not be dangerous to himself or others within the reasonable future; and, that the respondent is being arbitrary and capricious in not certifying him to the Honorable Court for an Unconditional Release.

The respondent denies that he is being arbitrary and capricious.

3. During the petitioner's period of confinement in Saint

Elizabeths Hospital, he has been under the care and observation of members of the medical staff of Saint Elizabeths Hospital, skilled in the care, diagnosis and treatment of nervous and mental disorders, who are of the opinion that he has not recovered from his abnormal mental condition, Schizophrenic Reaction, Chronic Undifferentiated Type; and, the respondent is unable to certify that the petitioner will not be dangerous to himself or others within the reasonable future by reason of mental disoreder.

WHEREFORE, the premises considered, the respondent prays that the writ of habeas corpus should not issue.

/s/Dale C. Cameron, M. D.
Superintendent
Saint Elizabeths Hospital

DISTRICT OF COLUMBIA, ss:

I, Dr. Dale C. Cameron, solemnly swear that I am Superintendent of Saint Elizabeths Hospital, have read the foregoing return and answer by me subscribed, know the contents thereof, and verily believe the same to be true.

I hereby certify that a copy of the foregoing return and answer has been sent this date to the petitioner.

/s/Dale C. Cameron, M. D.
Superintendent
Saint Elizabeths Hospital

Notarization

(Filed March 15, 1966)

CRIMINAL NO. 71-62

ORDER OF COMMITMENT

The defendant in the above-entitled cause having been found not guilty by reason of insanity by the jury duly impanelled in said cause, it is by the Court this 3rd day of June, 1964, pursuant to Section 301, Title 24, District of Columbia Code, as amended August 9, 1955,

ORDERED that the defendant, Leonard W. Collins, be confined in Saint Elizabeths Hospital.

/s/Pine, J.

(Filed March 16, 1966)

ORDER

Upon consideration of the petition of Leonard W. Collins for a writ of habeas corpus, and the response thereto filed by Dale C. Cameron on March 15,1966, it is this 16th day of March, 1966,

ORDERED that the writ of habeas corpus issue returnable on the 28th day of March, 1966 at 10:00 AM.

FURTHER ORDERED that Karl G. Feissner is requested to represent the petitioner in this proceeding.

/s/ Sirica, J.

(Filed April 5, 1966)

MOTION FOR SUPPLEMENTAL ORDER AUTHORIZING PRIVATE MENTAL EXAMINATION

Comes now the petitioner, through his Court-appointed counsel, and respectfully moves this Court to supplement its order entered on the docket March 28, 1966, by allowing the petitioner an independent medical examination. While this petitioner's original motion did seek an independent medical examination, the Court saw fit to refer the petitioner to the Legal Psychiatric Services of the United States District Court. It is respectfully contended that the Legal Psychiatric Services of the District Court will be nothing more than a feed-back of the institutional reports from St. Elizabeths Hospital, and that since the Legal Psychiatric Services of this Court and St. Elizabeths Hospital are both working in a sense for the same person, that is the United States, then the petitioner is entitled to an independent examination by an independent psychiatrist who is not dependent upon nor amenable to sanctions of either the government, its agents or servants. For these reasons, and such others that might be heard, this petitioner respectfully moves the Court to supplement its order and allow an independent medical examination at the cost of the United States, or to grant such other and further relief as would appear just in the premises.

/s/Karl G. Feissner
Attorney for Petitioner

(Certificate of Service)

(Filed April 7, 1966)

Motion of petitioner for FIAT order authorizing private mental examination denied.

/s/Gasch, J.

EXCERPTS

United States
Court House
Washington, D.C.

April 25, 1966

Convened, pursuant to notice,

BEFORE
UNITED STATES DISTRICT JUDGE
HON. ALEXANDER HOLTZOFF

MR. FEISSNER: I would like to bring to Your Honor's attention one fact. The petitioner did ask for an independent mental examination and we have not been able to have that. We did have an examination by the Court's Legal Psychiatric Service.

THE COURT: That is independent.

MR. FEISSNER: Your Honor, I am just bringing it to the Court's attention, not arguing the point to the Court.

We feel by independent means someone who is not connected with the government.

THE COURT: Well, the government isn't going to pay for that.

You have to bear in mind, gentlemen, that St. Elizabeths doctors are impartial. It isn't as though the United States Attorney went out and said I will hire Dr. Jones or Dr. Smith. If that were the case, then I think it would be fair to permit the defendant to hire a doctor of his choice, but the United States Attorney doesn't have any choice and he frequently is surprised at the outcome of those examinations. St. Elizabeths doctors are impartial.

Moreover, when a person commits a homicide he can't expect to

be released in short order because the fear is always: well, a man who is so easy to resort to firearms or dangerous weapons might do it again.

MR. FEISSNER: Your Honor, the last point we would make in our brief opening statement to the Court is that Mr. Collins has an excellent background in that he had been in the military service for some 20 years, honorably discharged, and he had no prior criminal record until this offense.

THE COURT: Under what circumstances did he kill his wife, do you care to state, or do you know?

MR. FEISSNER: The record indicates that Mr. Collins' wife fell off a second floor porch. I believe Mr. Collins has maintained rather steadfastly that it was an accident, that she fell of her own accord.

I believe that the government contends that he pushed her and there was an issue joined in that respect.

THE COURT: The jury, of course, found that he had committed the homicide.

MR. FEISSNER: That would be implicit in a finding of not guilty by reason of insanity.

THE COURT: Precisely, because juries are always instructed that if they are not convinced beyond a reasonable doubt that the crime was committed they must find a verdict of not guilty without any qualification; as a prerequisite to an acquittal on the ground of insanity they must conclude beyond a reasonable doubt that the criminal act or act that would otherwise be criminal was committed.

MR. FEISSNER: They could have concluded that manslaughter had transpired.

THE COURT: Yes, they could have.

* * * * *

THE COURT: Very well, suppose you call your doctor.

MR. LUMBARD: First, Your Honor, I would like to call Dr. Goldberg.

THE COURT: I will let you call only one doctor.

MR. LUMBARD: Then I will call Dr. Weickhardt.

THE COURT: I think Dr. Goldberg should remain here. You may need him in rebuttal.

I think, Mr. Lumbard, in a case such as this, one doctor is enough to make out a prima facie case.

GEORGE WEICKHARDT

was called as a witness by Respondent, having been duly sworn, was examined and testified as follows:

* * * * *

A I am a physician on the staff of St. Elizabeths Hospital. I specialize in psychiatry. I am assigned to the John Howard Division.

MR. FEISSNER: We will stipulate the qualifications.

THE COURT: Very well.

Q In the course of your work at St. Elizabeths Hospital have you had occasion to examine, treat and observe the petitioner in this case, Leonard W. Collins?

A Yes, I have.

Q Are you familiar with the hospital records in regard to Mr. Collins?

A Yes, I am.

8 Q What is your present position in relation to Mr. Collins at the hospital.

A I am the ward administrator of Mr. Collins' ward.

Q On the basis of your acquaintance with Mr. Collins and your familiarity with the records, have you been able to formulate an opinion as to whether he is presently suffering from a mental illness?

A Yes, I have.

Q And what is that opinion?

A That he has a mental illness of psychotic proportions.

Q Specifically, what is the diagnosis?

A Schizophrenic reaction.

Q What medication --

THE COURT: Of what type? Aren't there several types?

THE WITNESS: Well, I would say this is a paranoid type.

By MR. LUMBARD:

Q In what way does this illness manifest itself?

A I think I can best illustrate that by saying what happened in January when I discontinued Mr. Collins' medication.

9 At that time, a few weeks after his medicine had been discontinued, he became excited because he had read in the newspaper that a man had fired off a rifle near the White House. This other man was subsequently brought to the hospital. Mr. Collins said

this is a shot that will be heard around the world. He became very much worked up about it. He said --

THE COURT: Doctor, you were asked to state how the illness manifests itself. Suppose you answer that question. The information you just gave is very helpful, but we want the other first.

THE WITNESS: He became very much upset, very boisterous.

THE COURT: How does his illness manifest itself? Does he have delusions or hallucinations or does he talk irrationally or what?

THE WITNESS: Your Honor, he then had a struggle with the attendants who were trying to give him a bath. He was injured on account of that.

When I saw him immediately after that he said the medicine that you have been giving me has caused my genital organs to shrink up.

I would regard that as a delusional idea.

THE COURT: Very well. Has he manifested delusions on any other occasions?

THE WITNESS: Yes, he has.

THE COURT: What are the delusions?

THE WITNESS: That he was sent to the hospital illegally by a judge who was an alcoholic.

BY MR. LUMBARD:

Q What medication is he presently receiving?

A Thorazine.

Q And what is the dosage?

A 100 milligrams twice a day.

Q How would you describe that medication?

A That is a moderate amount.

THE COURT: Is that a tranquilizing drug?

THE WITNESS: Yes.

Q How does the illness manifest itself even under the influence of this drug?

A He still has paranoid ideas about the illegality of his detention at the hospital and the conspiracy of the government, various government officials to keep him there.

Q Have you ever discussed ---

THE COURT: How do you know he has these ideas? Has he said anything? What does he say? How does he express those ideas? You have got to be concrete, Doctor.

THE WITNESS: When he is getting medication he doesn't express these ideas.

THE COURT: But has he ever expressed them?

THE WITNESS: Yes.

THE COURT: How did he express them? What did he say?

It is one thing to say a person has ideas, and another to say he has so-and-so from which I infer that he has ideas.

THE WITNESS: He said that we had misinterpreted his statement when he told us that his food was poisoned, that the Federal Bureau of Investigation was after him and that he was being followed by communists.

THE COURT: Did he say that?

THE WITNESS: At one time he did.

THE COURT: Then why don't you tell me that? Why do we have to draw all this out?

We have asked you, Mr. Lumbard has asked you, I have asked you, how does his illness manifest itself. It manifests itself in part by his making those statements?

THE WITNESS: Yes, Your Honor.

THE COURT: Then why didn't you tell me all that.

BY MR. LUMBARD:

Q Have you discussed with Mr. Collins the offense which led to his present confinement?

A Yes, I have.

Q And did he explain this to you?

A Yes, he did.

Q And what did he say about it?

A He told me that he pushed his wife from the balcony.

Q And did he say why?

A Because she woke him up when he was asleep after he had been drinking and after he had returned from a funeral.

Q Do you have any opinion as to whether Mr. Collins, if released from the hospital, would be dangerous to himself or to others?

A As long as Mr. Collins takes medication and refrains from alcohol he gets along well. If he were to discontinue his medication and if he were to resort to alcohol, then I think he would again become dangerous.

Q What would you say the likelihood of his resorting to alcohol again would be?

A He has a long history of use of alcohol and I would be inclined to think that he might go back to it.

Q What do you mean by long history of use of alcohol?

A When he was in the navy he was hospitalized on at least one occasion for what they described as an alcoholic delirium.

MR. LOMBARD: I have no further questions.

THE COURT: Any cross-examination?

CROSS-EXAMINATION

BY MR. FEISSNER:

Q Your records indicate Mr. Collins was Honorably discharged from naval service?

A Yes, they do.

Q It was after 20 years' service?

A That is correct.

Q You indicated to the Court that as long as he takes his medication and would stay away from alchohol he would get along fairly well; is that accurate?

A He does in the hospital get along quite well when he is taking his medicine.

THE COURT: Let's leave out the alchohol phase of it because many normal people drink too much.

But suppose tranquilizer drugs were discontinued from him, what in your opinion would be the effect?

THE WITNESS: Then I think he would become very much upset over minor incidents, such as he did in January.

BY MR. FEISSNER:

Q People on the outside, if I may, take Thorazine in these amounts and continue in their daily living, don't they?

A Yes.

THE COURT: I think that is outside of the proper scope of cross-examination.

Q If I may, Thorazine is prescribed generally, is a normal prescription for psychiatrists in private practice to outside patients?

A It's prescribed for some patients who are not hospitalized, yes.

Q On those patients who are not hospitalized who it is used for, if it was taken away from them perhaps they would become condidates for hospitalization, wouldn't they?

A Perhaps they would.

Q What objective test, if any, has been utilized by the hospital or yourself within the preceeding three to four months to assist you in arriving at the diagnosis of schizoid personality with paranoid type?

A Only my own observations.

Q Are there not tests of an objective nature which are available?

A Well, perhaps you are thinking of psychological tests.

Q Yes, sir.

A But I was inclined to conclude that in Mr. Collins' case the diagnosis was so --

THE COURT: You used the prior record also to help your observations, did you not?

THE WITNESS: Yes, I did.

THE COURT: You can't take a man's pulse or blood pressure in order to find out whether he is mentally ill.

BY MR. FEISSNER:

Q The point, if I may, Doctor, within the last 90 days there have been no Wechsler Bellvue series or anything of that nature?

A No.

Q Have they ever been done on this man?

A Yes.

Q Do you know when?

A 1962.

Q These statements that you made to the Court regarding Mr. Collins' feelings about food being poisoned and some remarks about the FBI, were these statements made by

16 Mr. Collins to you?

A The statement Mr. Collins made to me was when I said my food was poisoned the doctors misinterpreted it.

Q And that is all he said to you?

A About the food being poisoned, yes.

Q He said that someone who had claimed that he said that had misinterpreted what he said?

A That is correct.

Q It certainly is not paranoid thinking to try and explain to a doctor that he could have been misinterpreted.

A It may be interpreted as normal thinking.

Q The last point I would pursue, you indicated as to your own personal observation in January of this year he had some objection about the firing of a rifle at or near the White House?

A That is correct.

Q His reaction to this was abnormal, as you felt it?

A He over-reacted to this to the point where he became quite excited and boisterous and unruly and had to be transferred to one of the disturbed wards in our building.

Q Prior to this time my examination of some of the records had indicated that he had gone over --

THE COURT: Please don't make a statement. Just ask questions.

BY MR. FEISSNER:

Q Has there been any extended period of time where this man has been without medication?

A Not as far as I am aware.

Q Would you be kind enough to check the record between the period May 1962 and June 1964?

THE COURT: I don't think we are interested in what happened prior to that. He has been under medication for quite some time. If there was a period prior to 1962 when he wasn't under medication, I don't think that would help us.

MR. FEISSNER: I am speaking of subsequent to '68, Your Honor. Perhaps I misphrased it. Excuse me.

THE COURT: Suppose you point to a particular period so as to save time.

MR. LUMBARD: Your Honor, I would like to object to this because this relates to the period when Mr. Collins was in St. Elizabeths Hospital having been found incompetent to stand trial and before he stood trial on the first, second and third of June 1964.

THE COURT: I will allow the question, nevertheless, because if he needed tranquilizing drugs he would have gotten then, I presume, even if he was there for an examination.

18 BY MR. FEISSNER:

Q Directing your attention to the period May 1962 until June 1964, do your records indicate whether or not he received medication for that entire period?

A I am not sure what the records show there. I would assume, though, that his medication was discontinued before he was permitted to go back to court to be tried.

MR. FEISSNER: I think that is all I have.

REDIRECT EXAMINATION

BY MR. LUMBARD:

Q Doctor, in what way did Mr. Collins say that his previous statement about his food having been poisoned had been misinterpreted?

A He mentioned it in connection with other statements about the FBI and about communists.

Q Did he say that he had not made such statements or that he had not meant them in the way --

A He did not say that he had not made such statements. He merely said that the doctor who arrived at the conclusion that he did misinterpreted his statement.

Q Did he go into this at any more length?

A He felt that he had improved a great deal since that time. And I agree that he has. I think Mr. Collins has

19 improved.

THE COURT: What is the prognosis?

THE WITNESS: I would think that he will require medication for a prolonged period of time, but that he may require it for years.

THE COURT: But, in other words, it is not an incurable case?

THE WITNESS: No, Your Honor, I would say it is not an incurable case.

MR. LUMBARD: No further questions.

THE COURT: Thank you. You may step down.

MR. FEISSNER: I will put the petitioner on the stand, if I may.

LEONARD W. COLLINS

Petitioner, called as a witness, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. FEISSNER:

Q Your name is Leonard Collins?

A Leonard William Collins, yes.

Q You are presently in St. Elizabeths Hospital?

A Yes.

Q For how long a period of time have you been in St. Elizabeths?

A Since March 16, 1962.

Q Do you know what year this is?

A It's April 25, 1966.

Q What is presently being done for you at St. Elizabeths Hospital?

A I am taking medicine twice a day and therapy. We have therapy once a week. I have that.

Q Mr. Collins, some remarks have been made about an incident in January of this year regarding the firing of a rifle shot near the White House and your reaction to it. Would you explain that to the Court?

A Yes. I tried to explain that, that I thought that was a wrong thing. If that is all a man wanted to do to come to St. E's, that is all he would have to do. I could see where a man with a large family, 10 or 12 children, if he wanted to get on relief, as Mr. Torrez had done, he would just fire a shot into the air, then he could come to St. E's and the welfare would take care of him.

Q The situation has been also referred to about your food and some comments about poisoning of food.

A No, I never complained about the food being poisoned at all. When I first was admitted to St. E's a man 21 gave me a sandwich. I ate that sandwich and then I drank a lot of water, and through that I had indigestion. I never complained about the food being poisoned at all.

Q Prior to coming to St. Elizabeths what was your form of endeavor or employment?

A I worked as operating engineer for GSA.

Q How long had you been there?

A A little bit over four years.

Q And prior to that?

A I had served in the navy.

Q How may years?

A A bit over 20 years.

Q Have you had any record of felony or criminal conviction of any magnitude.

A No.

Q Ever been arrested by the police or in trouble for any felony convictions or assault or matters of an assaultive nature, other than that with which you were tried here in '64?

A No.

Q What in your judgment is your mental health today?

A As the doctor said, I thought I was doing well up until the first of the year he took me off medicine. And then the 4th of January I had a talk with the doctor and he

informed me that he talked with my former attorney and that my mother was worred about who was paying for my keep at the hospital. That upset me. That upset me much more than Mr. Torrez.

Q Mr. Torrez is the man that was in the paper with all those children who fired that shot?

A Yes.

Q And you were upset about the question of your mother paying the bill at the hospital?

A Yes.

Q If you were released today what would you do?

A I would find me a job as soon as possible.

MR. FEISSNER: Thank you, Your Honor.

THE COURT: No Cross-examination?

CROSS-EXAMINATION

BY MR. LUMBARD:

Q Mr. Collins, although you have had no serious crime involvement you have been arrested several times for drunk, have you not?

A That is true.

Q Going back to, I think there were about six times the first of 1947?

A Five or six times, yes.

Q And I think that was while you were in the navy the first couple of times?

A Yes, I was in the navy when that happened.

THE COURT: Do you have anything further?

MR. LUMBARD: I have nothing further, Your Honor.

THE COURT: You may step down.

Writ discharged, petition dismissed.

The very fact that the petitioner is under tranquilizing drugs would make it dangerous to release him.

Mr. Feissner, the Court wishes to thak you for performing a public duty at the request of the Court.

(The hearing stood concluded.)

* * * * *

(Filed April 27, 1966)

FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDER

This matter having cone before the Court on a petition for a writ of habeas corpus and the writ having been issued; whereupon the Court having considered the petition, the return and answer thereto, and testimony and argument adduced in open court, the Court makes the following findings of fact:

1. Petitioner, Leonard W. Collins was committed to Saint Elizabeths Hospital on June 3, 1964, by order of the United States District Court ofr the District of Columbia pursuant to the provisions of 24 D.C. Code Section 301, as amended, after having been found not guilty by reason of insanity on a charge of second degree murder in Criminal Case No. 71-62.

2. A hearing on the writ was held on April 25, 1966, at which petitioner testified in his own behalf and was represented by counsel appointed by the Court, and at which expert testimony was received by the Court.

3. The evidence shows that petitioner is suffering from an abnormal mental condition, schizophrenic reaction, chronic undifferentiated type, and could be dangerous to himself or others if released into the community.

4. The superintendent of Saint Elizabeths Hospital has not certified to the Court that petitioner is eligible for release in accordance with the provisions of 24 D.C. Code Section 301(e).

WHEREFORE, the Court concludes as a matter of law that:

1. Petitioner has failed to sustain his burden of proving his eligibility for release under the statute.

2. Petitioner has not shown that the failure of the superintendent to certify him for release is arbitrary or capricious.

3. Petitioner is legally detained in the custody of respondent.

WHEREFORE, it is ordered that the writ be discharged, the petition dismissed and the petitioner remanded to the custody of the respondent.

/s/Holtzoff, J.

(Filed May 16, 1966)

MOTION FOR LEAVE TO APPEAL IN FORMA PAUPERIS

Comes now the petitioner, Leonard W. Collins, through his Court appointed counsel, and moves this Court for leave to appeal

in forma pauperis and to require the Clerk to file the petitioner's notice of appeal from the order of this Court entered on the 27th day of April, 1966. For cause petitioner states that he is an indigent and without funds and that the findings of the Trial Court are without foundation according to the petitioner himself.

/s/ Karl G. Feissner
Attorney for Petitioner

(Certificate of Service)

(Filed May 19, 1966)

FIAT

Application for leave to appeal in forma pauperis denied; frivolous and not in good faith.

/s/Holtzoff, J.

UNITED STATES COURT OF APPEALS
For the District of Columbia Circuit

Misc. No. 2819

(Filed June 7, 1966)

PETITION FOR LEAVE TO APPEAL IN FORMA PAUPERIS
SAID LEAVE HAVING BEEN DENIED BY THE DISTRICT COURT

Leonard W. Collins presently held in St. Elizabeths Hospital, through his court-appointed counsel, Karl G. Feissner, respectfully moves this Court for leave to appeal from an order of the U.S. District Court, Holtzoff, Judge, entered on May 19, 1966, denying petitioner's application for leave to appeal in forma pauperis from an order entered April 27, 1966, denying Writ of Habeas Corpus. This application is made in accordance with the

provisions of Article 28, Section 1291, et seq., and other decisions interpreted by the Court and other relevant provisions of the United States Code.

Respectfully submitted,

/s/ Karl G. Feissner
Attorney for Petitioner

/s/ Leonard W.Collins
Petitioner

POINTS AND AUTHORITIES

Petitioner, an indigent, seeks leave to appeal from the action of the United States District Court in its ruling upon the application for Habeas Corpus. The provisions of appeal are as follows:

1. Petitioner was denied due process in that the District Court denied his motion for an independent medical examination but instead had an examination by the legal psychiatric service of the United States District Court. Petitioner contended below and contends here that the report of the institutionalized psychiatrist was but a feed-back of the records of St. Elizabeth's Hospital and was not an independent examination conducted by one unassociated with the government.

2. The manner in which trial was conducted by the District Court Judge was offensive and exhibited biased attitude in that the District Judge would not allow the psychiatric witnesses of the government on either direct or cross-examination to fully explain the meaning of their opinions; and the demeanor of the District Court was such as to indicate total impatience with proceedings of this nature.

3. The evidence does not support the judgment of the Court in that the institutional psychiatrist who heard the testimony stated unequivocally that the petitioner would not be a danger to society if he continued on his medication and no longer participated in alcoholic inbibment. This testimony when considered with the medical opinion allowed to be expressed that medication taken by petitioner was minimal, indicates that the actions of the respondent were arbitrary and capricious in a legal sense.

4. The findings of fact and the conditions of law are patently unconstitutional in that finding No. 3 states "The evidence shows that ... and could be dangerous to hinself ..."; that petitioner could be dangerous is beyond the scope of Statute, Title 24, Section 301E and is beyond the scope of any Court in common law jurisdiction and actually is beyond the scope of the Fifth Amendment of the Constitution. Petitioner "could be" president, "could be" a reincarnation, "could be" a millionaire, and indeed by some stretch of the imagination "could be" dangerous. The theories of "could be" however, are not sufficient to deny liberty when the appropriate standard would seem to be whether or not in the opinions expressed with reasonable medical certainty he would be dangerous in the reasonable foreseeable future to himself or others.

For these reasons and such others as may be heard, this petitioner moves for leave to appeal from the action of the District Court rendered May 19, 1966, denying him leave to appeal said application being frivolous and not in good faith.

/s/Karl G. Feissner
Attorney for Petitioner

(Certificate of Service)

(Filed June 7, 1966)

AFFIDAVIT

I, Leonard W. Collins, the above-named petitioner, in accordance with Title 28, Section 1915 of the United States Code, do hereby represent and state to this court that I am personally without funds and am unable to pay the costs or give security therefor to bring an appeal. This affidavit is in support of my petition for leave to appeal in forma pauperis. The United States District Court, Holtzoff, Judge, denied me leave to appeal from his denial of my application for a writ of habeas corpus, thereby forcing me to bring this petition. I feel that I am now being illegally detained in Saint Elizabeth's Hospital by the respondent, and I feel that this court will, upon the granting of my petition and the hearing of my appeal, order my release and thereby grant me the redress to which I am entitled.

/s/Leonard W. Collins
Petitioner

Notarization

(Filed July 1, 1966)

ORDER

On consideration of petitioner's petition for leave to prosecute an appeal without prepayment of costs, and of respondent's statement filed pursuant to Rule 41(e) of this court, it is

ORDERED by the court that the petition be granted, and petitioner is allowed to prosecute his appeal in this case

without prepayment of costs, and it is

FURTHER ORDERED by the court that the reporter's transcript of the proceedings in the District Court on April 25, 1966, shall promptly be prepared at the expense of the United States.

Per Curiam

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BRIEF FOR APPELLEE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20371

LEONARD W. COLLINS, APPELLANT

v.

DALE C. CAMERON, SUPERINTENDENT, SAINT ELIZABETHS HOSPITAL, APPELLEE

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

DAVID G. BRESS,
United States Attorney.

FRANK Q. NEBEKER,
THOMAS LUMBARD,
CHARLES A. MAYS,
Assistant United States Attorneys.

H.C. No. 120–66

QUESTIONS PRESENTED

In the opinion of the appellee, the following questions are presented:

At a hearing on a writ of habeas corpus whereby appellant was seeking his unconditional release from Saint Elizabeths Hospital having been committed there after being found not guilty by reason of insanity on a charge of second-degree murder, where there was medical testimony that appellant was afflicted with a mental illness by reason of which he would be dangerous to himself or to others, was there sufficient evidence to sustain the court's finding that appellant was suffering from an abnormal mental condition and would be dangerous to himself or to others if released into the community? Was appellant's detention cruel and unusual punishment in violation of the constitution?

232-820—66

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20371

LEONARD W. COLLINS, APPELLANT

v.

DALE C. CAMERON, SUPERINTENDENT, SAINT ELIZABETHS HOSPITAL, APPELLEE

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

Appellant, Leonard W. Collins, was committed to Saint Elizabeths Hospital on June 3, 1964, pursuant to 24 D.C. Code § 301(d), having been found not guilty by reason of insanity on a charge of second-degree murder arising out of the death of his wife.[1] On March 9, 1966, appellant, *pro se*, filed in the District Court a petition for a writ of habeas corpus, seeking his unconditional release from the hospital.[2] In his petition he stated that Dr. Cameron was acting arbitrarily and capriciously in depriving him of his freedom. The Court, on the same day, issued an order commanding appellee to show cause why the writ should not issue.

In his return and answer to the rule to show cause, appellee admitted that appellant was detained but denied that the detention was illegal. Dr. Cameron also denied in the return

[1] Cr. No. 71-62.

[2] H.C. No. 120-66.

that he was acting arbitrarily and capriciously and pointed out that appellant

> has been under the care and observation of members of the medical staff of Saint Elizabeths Hospital, skilled in the care, diagnosis and treatment of nervous and mental disorders, who are of the opinion that he has not recovered from his abnormal mental condition, Schizophrenic Reaction, Chronic Undifferentiated Type; and, the respondent is unable to certify that the petitioner will not be dangerous to himself or others within the reasonable future by reason of mental disorder.

The writ was issued on March 17, 1966, returnable on March 28, and Karl G. Feissner, the same counsel representing appellant on appeal, was appointed to represent the petitioner below. On March 25, appellant, through counsel, filed a Motion for Independent Mental Examination. On March 28, the court below, per Gasch, J., granted appellant's motion, referred the matter to Legal Psychiatric Services for examination and report, and continued the hearing on the writ to April 25, 1966.[2]

On April 25, 1966, the case came on for a hearing before Judge Holtzoff. Appellee presented as a witness Dr. George Weickhardt, a psychiatrist at Saint Elizabeths Hospital, assigned to the John Howard Pavilion (Tr. 7). The doctor testified that he is the ward administrator of appellant's ward at the hospital and he had had occasion to examine, treat and observe appellant and is familiar with the hospital's records in regard to him. (Tr. 7, 8). On the basis of his acquaintance with appellant and his familiarity with the records, Dr. Weickhardt was of the opinion that appellant was presently suffering from a mental illness of psychotic proportions—schizophrenic re-

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[2] The report of Dr. Goldberg of the Legal Psychiatric Services, filed in the District Court on April 21, 1966, indicated:

"As a result of [the examination the doctor had conducted pursuant to the order of the Court], it [was his] opinion that the said Leonard W. Collins continues to suffer from a mental disorder, Schizophrenic reaction, chronic undifferentiated type. It [was his] feeling that the patient, Leonard W. Collins, might be dangerous to himself or others if released into the community within the reasonably foreseeable future."

action of a paranoid type (Tr. 8). Appellant was at that time being administered 100 milligrams of Thorazine, a tranquilizing drug, twice a day (Tr. 10). On one occasion when the medication was discontinued, appellant became overly excited because he read someone discharged a gun near the White House and he was so unruly and boisterous that he had to be transferred to one of the disturbed wards in the building (Tr. 9, 16). The doctor opined that if the tranquilizing drug were discontinued, appellant would become very upset over minor incidents, such as that involving White House (Tr. 13–14). Even under the influence of Thorazine, appellant had paranoid ideas about the illegality of his detention at the hospital and the conspiracy of various government officials to keep him there (Tr. 10).[4]

On cross-examination the doctor admitted that people outside Saint Elizabeths take Thorazine in the same amounts prescribed for appellant and continue in their daily lives (Tr. 14). Doctor Weickhardt also conceded that some of these persons might very properly be admitted to Saint Elizabeths if they did not take the drug (Tr. 14). He testified, however, that as far as appellant's prognosis was concerned he would need the medication for a prolonged period, perhaps for years, but that his case was not incurable (Tr. 19).

Appellant presented his case entirely through his own testimony. He admitted he was presently receiving medication and therapy at the hospital (Tr. 20) and said he thought he was doing well until he was taken off the medication (Tr. 21). He explained that the time he became so upset it was because of worry over his mother's paying his bills at the hospital, not only as a result of reading about the White House incident (Tr. 22).

After hearing the evidence, the court below discharged the writ and dismissed the petition, commenting: "The very fact that the petitioner is under tranquilizing drugs would make it dangerous to release him." (Tr. 23). Thereafter, on April

[4] *E.g.*, that he was sent to the hospital by a judge who was an alcoholic (Tr. 10), that the F.B.I. was after him and that he was followed by Communists (Tr. 11).

27, 1966, the trial court entered its findings of fact and conclusions of law. The court below found *inter alia*:

> 3. The evidence shows that petitioner is suffering from an abnormal mental condition, schizophrenic reaction, chronic undifferentiated type, and could be dangerous to himself or others if released into the community.
>
> 4. The superintendent of Saint Elizabeths Hospital has not certified to the Court that petitioner is eligible for release in accordance with the provisions of 24 D.C. Code Section 301(e).

The Court went on to conclude as a matter of law:

> 1. Petitioner has failed to sustain his burden of proving his eligibility for release under the statute.
>
> 2. Petitioner has not shown that the failure of the superintendent to certify him for release is arbitrary and capricious.
>
> 3. Petitioner is legally detained in the custody of respondent.

STATUTE INVOLVED

Title 24, § 301, District of Columbia Code, provides in pertinent part:

> (d) If any person tried upon an indictment or information for an offense, or tried in the juvenile court of the District of Columbia for an offense, is acquitted solely on the ground that he was insane at the time of its commission, the court shall order such person to be confined in a hospital for the mentally ill.
>
> (e) Where any person has been confined in a hospital for the mentally ill pursuant to subsection (d) of this section, and the superintendent of such hospital certifies (1) that such person has recovered his sanity, (2) that, in the opinion of the superintendent, such person will not in the reasonable future be dangerous to himself or others, and (3) in the opinion of the superintendent, the person is entitled to his unconditional release from the hospital, and such certificate is filed with the clerk of the court in which the person was tried, and a copy thereof

served on the United States Attorney or the Corporation Counsel of the District of Columbia, whichever office prosecuted the accused, such certificate shall be sufficient to authorize the court to order the unconditional release of the person so confined from further hospitalization at the expiration of fifteen days from the time said certificate was filed and served as above; but the court in its discretion may, or upon objection of the United States or the District of Columbia shall, after due notice, hold a hearing at which evidence as to the mental condition of the person so confined may be submitted, including the testimony of one or more psychiatrists from said hospital. The court shall weigh the evidence and, if the court finds that such person has recovered his sanity and will not in the reasonable future be dangerous to himself or others, the court shall order such person unconditionally released from further confinement in said hospital. If the court does not so find, the court shall order such person returned to said hospital. * * *

* * * * *

(g) Nothing herein contained shall preclude a person confined under the authority of this section from establishing his eligibility for release under the provisions of this section by a writ of habeas corpus.

SUMMARY OF ARGUMENT AND ARGUMENT

The evidence was sufficient to support the court's finding that appellant was suffering from an abnormal mental condition and would be dangerous to himself or others if released; appellant's detention at Saint Elizabeths did not subject him to cruel and unusual punishment

(Tr. 8–11, 16, 19–21)

Appellant appears to be making two arguments in his brief: (1) that he is being punished in an unconstitutional manner by being detained at Saint Elizabeths Hospital "merely for the fact that he * * * takes tranquilizing drugs" (Br. 6); and (2) that the findings and conclusions of the court below are er-

roneous as not based on sufficient evidence. Neither has merit.

Turning first to appellant's cruel and unusual punishment argument, the only contention for which he cites any authority whatsoever, it is clear that he cannot prevail. He relies solely on *Robinson* v. *California*, 370 U.S. 660 (1962), and *Easter* v. *District of Columbia*, — U.S. App. D.C. —, 360 F. 2d 50 (1966) (*en banc*). He argues, as he must, that his detention at Saint Elizabeths is "punishment" and that the punishment is cruel and unusual because imposed solely for his use of tranquilizers. It is readily apparent that both premises of this argument are fallacious.

The mandatory confinement provision (24 D.C. Code § 301 (d)) applies to an exceptional class of people who have committed acts forbidden by law, who have sought and obtained verdicts of not guilty by reason of insanity, and who have been committed to a mental institution. *Overholser* v. *Leach*, 103 U.S. App. D.C. 289, 257 F. 2d 667 (1958), *cert. denied*, 359 U.S. 1013. The purpose of the commitment is twofold:

> (1) to protect the public and the subject;
>
> (2) to afford a place and a procedure to rehabilitate and restore the subject as to whom the standards of our society and the rules of law do not permit punishment or accountability. *Ragsdale* v. *Overholser*, 108 U.S. App. D.C. 308, 312, 281 F. 2d 943, 947 (1960).

See also *Overholser* v. *O'Beirne*, 112 U.S. App. D.C. 267, 269, 302 F. 2d 852, 854 (1961). "No penal or punitive considerations enter into this procedure." *Ragsdale* v. *Overholser*, *supra* at 312, 281 F. 2d at 947. *Accord*, *Miller* v. *Cameron*, 118 U.S. App. D.C. 323, 324, 335 F. 2d 986, 987 (1964); *Overholser* v. *O'Beirne*, *supra* at 274, 302 F. 2d at 859. It is clear, therefore, that the purpose of appellant's confinement at Saint Elizabeths Hospital is not "punishment." [5]

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[5] Both cases relied on by appellant fortify this conclusion. In *Easter*, after making it clear that a chronic alcoholic could not be punished for being intoxicated in public, the opinion joined in by four members of this Court read:

"We close this discussion with the observation that confinement, e.g. for inquiry or *treatment*, lies within the means available for dealing, *constitutionally*, with a menace to society." *Supra* at —, 360 F. 2d at 55. [Emphasis added.]

In *Robinson*, Justice Douglas, concurring, observed:

The record reveals that appellant is not being detained at Saint Elizabeths merely because he is taking a tranquilizing drug, but rather is hospitalized because a jury found that he killed his wife while insane,[6] and because he has not recovered his sanity and would be a danger to himself and others if released from the hospital (Tr. 8, 10, 16; Letter of Dr. Goldberg filed in the District Court on April 21, 1966). Appellant is not being detained because he being administered a tranquilizing drug; rather, he is hospitalized for treatment and rehabilitation, part of which calls for the administering of the drug (Tr. 10, 20). It is clear, therefore, that *Easter* and *Robinson* are inapposite.

Secondly, appellant's argument regarding the sufficiency of the evidence to support the court's findings is based upon an erroneous conception of the burden of proof. In order to establish his eligibility for release, a member of the "exceptional class" to which appellant belongs must establish that he has recovered from his insanity to the point that he is free "from such abnormal mental condition as would make [him] dangerous to himself or the community in the reasonably foreseeable future." *Overholser* v. *Leach, supra* at 292, 257 F. 2d at 670 (footnotes omitted); see *Overholser* v. *O'Bierne, supra; Starr* v. *United States*, 105 U.S. App. D.C. 91, 264 F. 2d 377 (1958), *cert. denied*, 359 U.S. 936. When such an individual seeks his release by means of a writ of habeas corpus, as appellant has done here, he bears the burden of proof. *Overholser* v. *O'Beirne, supra; Overholser* v. *Russell*, 108 U.S. App. D.C. 308, 281 F. 2d 943 (1960); *Overholser* v. *Leach, supra*. The court below recognized this when he concluded that appellant had failed to sustain his burden of proving his eligibility for release.

"The addict is a sick person. He may, of course, be confined for *treatment* or for the protection of society.[4] Cruel and unusual punishment results not from confinement, but from convicting the addict of a crime." 370 U.S. at 676. [Emphasis added.]

In footnote 4 Justice Douglas referred the reader to *Lynch* v. *Overholser*, 369 U.S. 705 (1962), as to the confinemnt and treatment of the insane.

[6] "Inherent in a verdict of not guilty by reason of insanity are two important elements, (a) that the defendant did in fact commit the criminal act charged, (b) that there exists some rational basis for belief that the defendant suffered from a mental disease or defect of which the criminal act is a product." *Ragsdale* v. *Overholser*, *supra* at 313, 281 F. 2d at 948.

The burden is a heavy one, more than just a preponderance of the evidence, because the "primary purpose" of the mandatory commitment statute is "protection for the public and for the subject."

> In a "close" case even where the preponderance of the evidence favors the petitioner, the doubt, if reasonable doubt exists about danger to the public or the patient, cannot be resolved so as to risk danger to the public or the individual. A patient may have improved materially and appear to be a good prospect for restoration as a useful member of society; but if an "abnormal mental condition" renders him potentially dangerous, reasonable medical doubts or reasonable judicial doubts are to be resolved in favor of the public and in favor of the subject's safety. *Ragsdale* v. *Overholser*, *supra* at 312, 281 F. 2d at 947.

In the instant case, Dr. Weickhardt, a psychiatrist from Saint Elizabeths Hospital, testified that, based on his contacts with appellant and his familiarity with the records, he was of the opinion that appellant was suffering from a mental illness of psychotic proportions—schizophrenic reaction of a paranoid type (Tr. 8) and that, while appellant had improved, he still became dangerous and unruly when not under the influence of Thorazine, a tranquilizing drug (Tr. 9, 16).[7] Dr. Goldberg, a psychiatrist attached to the Legal Psychiatric Services of the District Court, examined appellant and reported to the court below that appellant suffered from schizophrenic reaction, chronic undifferentiated type, and that appellant might be dangerous to himself or others if released into the community within the reasonably foreseeable future (Letter of Dr. Goldberg filed in the District Court on April 21, 1966). Appellant himself testified that he was presently receiving medication and therapy at the hospital (Tr. 20) and that he thought he was doing well *until he was taken off the medication* (Tr. 21). Dr. Weickhardt concluded that, while appellant's case was not

[7] The doctor also testified that even while under the influence of Thorazine, appellant had paranoid ideas about the illegality of his detention and the conspiracy of various Government officials to keep him at the hospital (Tr. 10, 11).

incurable, he would need the medication for a prolonged period (Tr. 19). Based on this testimony, the court below concluded that appellant was suffering from an abnormal mental condition and could be dangerous to himself or others if released from the hospital. There is substantial evidence to support these findings which should not be disturbed on appeal.[8]

CONCLUSION

WHEREFORE, it is respectfully submitted that the judgment of the District Court be affirmed.

DAVID G. BRESS,
United States Attorney.
FRANK Q. NEBEKER,
THOMAS LUMBARD,
CHARLES A. MAYS,
Assistant United States Attorneys.

[8] Appellant argues that the finding of the trial court that he "could be" dangerous is not sufficient to withhold the relief he sought. It is at this point that appellant misconceives the burden of proof. Appellant has the burden of showing that upon release he *will not* be dangerous to himself or others. Implicit the court's finding that he "could be" dangerous is a holding that appellant failed to prove that he "will not be" dangerous. The evidence warranted such a finding.

U.S. GOVERNMENT PRINTING OFFICE: 1966